

### **REMARKS/ARGUMENTS**

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

The Examiner has objected to alleged incorporation of essential material in the specification by reference to a foreign application. More specifically, the Examiner has objected to the incorporation by reference to the priority Japanese Patent Application in the first paragraph of the specification.

In this regard, the Examiner's attention is respectfully directed to MPEP Section 608.01(p)I.B., Page 600-84 of the May 2004 revision, second paragraph. The MPEP advises that the limitations on the material which may be incorporated by reference do not apply to applications relied on to establish an earlier effective filing date under 35 USC 119. Later in that same section, it is made clear that the policy concerns do not apply "where the sole purpose for which an applicant relies on an earliest U.S. or foreign application is to establish an earlier filing date." (emphasis added). In view of the foregoing, reconsideration and withdrawal of the Examiner's objection is respectfully requested.

The disclosure was objected to because of noted informalities. The matters noted by the Examiner have been corrected above.

Claims 1-10 were objected to because of noted informalities. The matters noted by the Examiner have been corrected above.

Original claims 1 and 3-9 were rejected under 35 USC 102(b) as being anticipated by Herden et al. Applicant respectfully traverses this rejection.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1574 (Fed. Cir. 1986).

While other references may be used to interpret an allegedly anticipating reference, anticipation must be found in a single reference. See, e.g., Studiengesellschaft Kohle, G.m.b.H. v. Dart Indus., Inc., 726 F.2d 724, 726-27 (Fed. Cir. 1984). The absence of any element of the claim from the cited reference negates anticipation. See, e.g., Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., Structural Rubber Prods., 749 F.2d at 716-17.

As clearly recited in claim 1 as presented in above, the supportive magnet 8 is disposed at an axial center portion of the second magnet member 2 (stator). The magnetic sensing unit which, as recited in claim 1, comprises at least two magnetic sensing elements 6 is symmetrical about the magnetization-direction axis of the supportive magnet 8. Furthermore, the two poles of the supportive magnet 8 respectively contact the two parts of the second magnet member, which is divided into at least two portions spaced by a magnetic gap. Thus, a closed magnetic path is formed within the second magnet member 2. That is, the magnetic flux of the supportive magnet 8 does not pass through the first magnet member 1 (rotor). The second magnet member 2 is fixed so that the magnetic flux therein has a stable orientation. Thus, supportive magnet 8 can provide the appropriate magnetic flux bias for the multiple magnetic sensing elements 6. In contrast to the unique and advantageous assembly claimed by applicants, Herden discloses, in Figures 1 and 2, that the supportive magnet 17 is deviated from the axial center portion of the second magnet member 10. The magnetic sensing unit (including at least one magnetic sensing element 16) is asymmetrical about the magnetization-direction axis of the supportive magnet 17. Referring to Figure 3 of Herden, the supportive magnet 17 contacts only one of the two parts of the second magnet member 10a which is divided. In this case, the magnetic force line (magnet path) of the supportive magnet 10

extends to the outer side of the second magnet member 10a. The first magnet member 11 is within the reach of the magnetic flux of the supportive magnet 17. Thus, the magnetic force of the supportive magnet is influenced by the magnetic force through the second magnet member 10, the main magnet 21,22 and the rotatable first magnet member 11, so that an error will be caused in the magnetic flux bias provided by the supportive magnet 17.

As is apparent from the foregoing, Herden does not anticipate the example embodiment of the invention specifically set forth in independent claim 1 and, as is evident from the above, the invention of claim 1 is not only different from Herden but provides a substantial and unanticipated advantages thereover. It is therefore respectfully submitted that the invention claimed is not anticipated by nor obvious from Herden.

New claim 11 provides a supportive magnet at an axial center of a second magnetic member and two magnetic sensing elements symmetrical about a magnetization-direction axis of the supportive magnet, which is not taught by Herden. Therefore, new claims 11 and 12 are also patentable over Herden.

In view of the foregoing, reconsideration and withdrawal of the rejection of claims 1 and 3-9 is solicited.

Claim 2 was rejected under 35 USC 103(a) as being unpatentable over Herden et al in view of Makino. Applicant respectfully traverses this rejection.

Claim 2 is submitted to be patentable over Herden for the reasons advanced above with respect to amended claim 1, from which claim 2 depends. The Examiner's further reliance on Makino does not overcome the deficiencies of the Herden patent with regard to the invention claimed. Therefore, even if Makino were applied to Herden, the invention recited in claim 1 would still not be anticipated nor obvious.

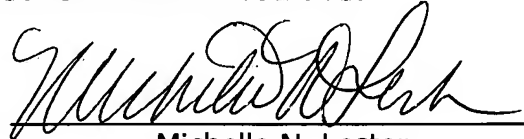
SHIMOMURA et al  
Appl. No. 10/670,214  
December 7, 2005

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and an early Notice to that effect is earnestly solicited.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:

A handwritten signature in black ink, appearing to read "Michelle N. Lester", written over a horizontal line.

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